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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of the Commission's Rules to
Establish Part 27, the Wireless
Communications Service ("WCS")

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GN Docket No. 96-228

DOCKET FILE COPY ORIGINAL

COMMENTS OF SBC COMMUNICATIONS INC.
ON THE NOTICE OF PROPOSED RULEMAKING

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INTRODUCTION

SBC Communications Inc., on behalf of its subsidiaries, Southwestern Bell Mobile Systems ("SBMS") and Southwestern Bell Telephone Company ("SWBT"), files the following comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-referenced docket.¹ In this docket the Commission has proposed to establish a new Wireless Communications Service ("WCS") in the 2305-2320 and 2345-2360 MHZ bands. The Commission further proposes to award flexible service licenses for this spectrum through competitive bidding. The Commission's proposal to establish WCS is appropriate provided it does so in a manner which maximizes spectrum efficiency and avoids a discriminatory result. However, the Commission's NPRM proposes to allow WCS licensees the unlimited flexibility to provide any fixed, mobile or radiolocation services, or satellite Digital Audio Radio Services ("satellite DARS") and also suggests the possibility of an unprecedented and inappropriate nation-wide license, rather than licenses consistent with previous auctions. The Commission must not implement these proposals, which would result in anticompetitive effects that undermine existing auctions and erode the value of existing licenses.

¹In the Matter of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket 96-228 (Released November 12, 1996).

COMMENTS

I. THE COMMISSION'S PROPOSED USE OF WCS SPECTRUM IS INAPPROPRIATE

The Commission proposes that a WCS licensee "use this spectrum for any use permitted within any of the allocation categories of fixed, mobile, radiolocation, and broadcasting-satellite services, subject to international requirements and coordination."² The proposed use is inappropriate for the following reasons:

- A. Overly flexible use of the WCS spectrum is discriminatory and deviates from regulatory symmetry with current CMRS providers.
- B. Technical problems could arise with overly flexible WCS licenses.
- C. WCS should be used to provide new wireless commercial services.

A. Overly Flexible Use of the WCS Spectrum is Discriminatory and Deviates from Regulatory Symmetry with Current CMRS Providers

The NPRM's proposed spectrum allocation is discriminatory. Overly flexible licensing of WCS nation-wide spectrum would place existing CMRS providers at a competitive disadvantage and impose regulatory imbalance because the Commission has proposed to allow WCS licenses far greater flexibility than that granted to CMRS providers.³ CMRS providers spent billions acquiring licenses and building out their wireless networks based upon the predictable economic value of the spectrum. Licensing WCS spectrum without direction or limitation would not only diminish the value of wireless spectrum and systems already in place, it would devalue PCS licenses even before the systems are operational.

As an example, SBC participated in the A and B Block PCS auction and is presently participating in the D and E Block PCS auction. SBC was motivated to bid primarily because it

²NPRM, p. 7.

³Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, Report and Order, p. 6, (Released August 1, 1996).

understood these licenses represented all of the spectrum that would be available for SBC to complete its in-region coverage. SBC's participation and bidding strategy would likely have been quite different had the Commission disclosed that more spectrum could become available through WCS. Carriers who invested far greater sums in the previous auctions must be similarly chagrined.

The Commission has recognized that a principle purpose of the Omnibus Budget Reconciliation Act of 1993 was to establish regulatory symmetry among all CMRS providers.⁴ Should the Commission decide to license WCS spectrum as additional CMRS spectrum, it should treat this spectrum comparably to previously auctioned CMRS spectrum. The Commission has failed to present why WCS licensees should be given greater incentives than current CMRS carriers merely to provide additional CMRS services.

B. Technical Problems Could Arise with Overly Flexible WCS Licenses

The Commission should also be aware that technical problems could arise with an unlimited WCS license. It may be technically impossible to have satellite DARS and land-based services coexist in the same band. For instance, if a satellite DARS is implemented in a service area adjacent to an area offering a land-based service on the same frequency, the satellite DARS transmissions may interfere with the non-DARS service. This potential interference occurs because the coverage area of a DARS satellite is very large and even "spot-beam" satellite antennas radiate into very large areas, larger than a typical MTA. A solution for this problem would be to allocate one portion of the WCS spectrum for satellite DARS service and another portion for non-satellite services only.

⁴In the Matter of Implementation of Sections 3(n) and 322 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, paras. 14-15 (Released March 7, 1994).

In addition, there may be some question as to whether the secondary allocations for amateur radio service or aeronautical telemetry are really practical. It may not be possible to coordinate these services without interfering with a primary WCS service.

C. WCS Should be Used to Provide New Wireless Commercial Services

SBC proposes that the Commission divide the WCS spectrum into three 10 MHz spectrum blocks for commercial services. SBC further suggests that the Commission define the services the WCS licensees would be able to offer through that spectrum. The Commission should consider dedicating the WCS spectrum to new services, such as wireless Internet, wireless telemetry, vehicle location/monitoring, wireless local area network or intelligent transportation systems. Also, the Commission should consider the opportunity to provide dedicated spectrum from the WCS bands for the needs of the public safety community, as suggested in the NPRM.⁵

II. COMMERCIAL SERVICES IN THE WCS SPECTRUM SHOULD BE AUCTIONED ON AN MTA AND BTA BASIS

Competitive bidding is an economically efficient method to allocate comparable blocks of commercial spectrum. The Commission is a world leader in conducting spectrum auctions. The proposed license areas of the WCS spectrum, however, are inappropriate and anti-competitive. The Commission has previously granted operating licenses for the use of spectrum in geographically discrete areas. This licensing scheme required potential operators to carefully plan how and where they desired to provide efficient service coverage within the budget they allotted for the service. Billions of dollars were spent for spectrum acquisition and billions more in building out these markets.⁶ Now, the Commission is proposing to alter radically the wireless landscape by offering a

⁵NPRM, p. 12.

⁶The Commission's A and B Block PCS auction totaled over \$7 billion in bids and the Commission's C Block PCS auction totaled over \$10 billion in bids. The D, E and F Block PCS auction, which is still in progress, currently totals over \$2 billion in bids. In addition, AT&T spent an estimated \$12 billion to acquire McCaw Cellular in 1994. This alone totals over \$31 billion in acquisition fees alone.

single nation-wide license. The effective devaluation of existing licenses is apparent, for none have a similar reach. Parties who have expended billions for existing markets do not necessarily have the capital dollars to participate in this auction, and even if they did, there would be significant overlap problems caused by the Commission's spectrum cap rules and the economic inefficiencies of owning two licenses for the same geographic territory. The Commission could not intend to have this chilling effect on the wireless market and its customers by introducing this "universal" license so late in the process.

Instead, the Commission should split the WCS spectrum into three 10 MHZ blocks that can be auctioned off for limited commercial uses with service areas that follow the MTA and BTA geographic scopes the Commission has previously employed.⁷ The Commission correctly acknowledges that the MTA and BTA service areas formerly drawn for the PCS auctions "provide certain economies of scale and scope needed for the development of low cost equipment, would promote the development [of] roaming within large geographic areas and would facilitate interoperability."⁸ The Commission should, therefore, license the WCS spectrum with 10 MHZ in MTA license areas and the remaining 20 MHZ into two BTA license areas. Utilizing the existing MTA and BTA service areas will allow for more parties to compete for the WCS licenses.

Importantly, the Commission cannot offer nation-wide WCS licenses without severely affecting previous CMRS licensees and the current PCS auctions. As stated previously, CMRS providers have spent billions acquiring licenses and building out their wireless networks. This investment was made with good faith belief that providers had to plan their service areas on a "regional" basis, guided by the Commission's division of license areas into MSA/RSAs and

⁷In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, para. 76, (Released October 22, 1993).

⁸NPRM, p. 8.

BTA/MTAs.⁹ To permit a nation-wide CMRS license at this late date potentially devalues the investment current CMRS providers have made and places them at an obvious competitive disadvantage. Calling scopes are a critical component in a customer's choice of a wireless provider, and to permit a single carrier to offer a ubiquitous nation-wide service creates an uneven playing field of epic proportions.

Although the Commission states that it will not entertain proposals with over 306 WCS licenses, multiple licenses provide for the most efficient use of spectrum.¹⁰ Multiple licenses allow providers to obtain only the spectrum they are interested in utilizing. Rather than obtaining a nation-wide license and possibly only serving the 50 largest metropolitan areas, providers who obtain only a small, regional license area are more likely to offer service to a larger percentage of the country's population. In addition, by having more WCS licensees, the public is more likely to be offered a greater diversity of services in that spectrum.

Many telecommunications companies have a regional focus and would be interested in pursuing some portion of the WCS spectrum covering their specific parts of the country. It is doubtful that such companies would or could bid on a nation-wide license for WCS, based in part on the CMRS spectrum cap. Certainly, the Commission would have to relinquish any thoughts of "designated entities" participating in a nation-wide WCS bid. Furthermore, the issue of a nation-wide license was addressed in the PCS proceeding, Docket No. 90-314, and was rejected for good cause.¹¹

⁹In 1981, the Commission announced that the cellular licenses would be issued in 306 Metropolitan Statistical Areas (MSAs) and 428 Rural Service Areas (RSAs). MSAs cover 75 percent of the population and 20 percent of the land mass while RSAs cover 25 percent of the population and 80 percent of the land mass. In 1993, the Commission concluded that a combination of Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) designed by Rand McNally based on the natural flow of commerce, physiography, population distribution and transportation would be used for PCS license boundaries (see Cellular Telecommunications Industry Association Spring 1996 Wireless Factbook, pp. 3 and 7).

¹⁰NPRM, p. 10, footnote 27.

¹¹In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, pp. 30-35,

There have been no significant changes since that docket, and no reasonable grounds for creating a nation-wide, CMRS-like license exist.

However, by offering WCS on an MTA and BTA basis, the Commission will promote competition, both horizontally and vertically. With multiple WCS licenses, multiple vendors will be used to provide equipment and services to the licensees, as opposed to the potential of one vendor receiving the sole contract for WCS equipment on a nation-wide basis. As seen with cellular and PCS through the licensing of multiple serving areas, more equipment, services and technologies are offered to the public. Communications providers such as SBMS, as well as CMRS consumers, enjoy significant benefits from the ability to choose between multiple vendors, which would also be realized by WCS consumers, if WCS is provided on a multiple serving area basis.

In addition, a larger number of WCS licenses would likely generate a greater amount of auction revenues, as evidenced by the results of the C Block PCS auction versus the A and B Block auction.

III. THE COMMISSION'S PROPOSALS CONCERNING LICENSE TERMS, DISAGGREGATION AND PARTITIONING ARE APPROPRIATE

The Commission proposes license terms of the same nature as CMRS. This is appropriate; WCS licensees should follow the same license terms and conditions as CMRS licensees. The Commission also proposes to allow partitioning and disaggregation of WCS licenses. The Commission should offer the same partitioning and disaggregation rules as are mandated for PCS service. The Commission should be cautioned, however, not to offer a nation-wide license with the expectation that licensee partitioning and disaggregating would eventually allow better nation-wide coverage of WCS spectrum. Not only does this plan place too much control of valuable spectrum in the hands of a private party, it also allows individual parties to speculate and to reap the profits

from partitioning and disaggregating valuable spectrum, rather than channelling those proceeds to the government.

CONCLUSION

In conclusion, SBC recommends the Commission use the WCS spectrum to provide an opportunity for additional wireless services to become a reality. However, the Commission should not offer spectrum on a nation-wide basis with unrestricted use because of its potential discriminatory effect upon other CMRS spectrum licensees.

Respectfully Submitted,

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